

Can A Claim Be Bought Into BC Rule 68 By Unilateral Amended Writ? - BCSC Says Yes

December 2nd, 2008

Reasons for judgment were released today dismissing a defence motion to strike out an amended Writ of Summons bringing an action into Rule 68.

Rule 68 is the “expedited litigation” rule and is mandatory for certain claims filed in the BC Supreme Court. Rule 68(2) deals with the types of claims that it applies to. The subrule reads as follows:

Actions to which this rule applies

(2) *Subject to subrule (5), this rule applies to an action commenced in the Vancouver, Victoria, Prince George or Nelson registry after September 1, 2005, and to every action commenced in any registry after January 1, 2008, if*

(a) *the only claims in the action are for one or more of the following:*

(i) *money;*

(ii) *real property;*

(iii) *personal property, and*

(b) *the total of the following amounts is \$100,000 or less, exclusive of interest and costs:*

(i) *the amount of any money claimed in the action by the plaintiff for pecuniary loss;*

(ii) *the amount of any money to be claimed in the action by the plaintiff for non-pecuniary loss;*

(iii) *the fair market value, as at the date the action is commenced, of all real property, all interests in real property, all personal property and all interests in personal property claimed in the action by the plaintiff.*

In this case the Plaintiff filed the action but did not endorse the Writ of Summons or Statement of Claim to bring the claim within the scope of Rule 68. The Plaintiff then filed an amended Writ of Summons and Statement of Claim with a ‘subject to Rule 68’ endorsement. The Defendant brought an application to strike the amended pleadings. Master McCallum of the BCSC dismissed the defence application ruling that the failure to add the Rule 68 endorsement was a mere irregularity. His key reasons are given at paragraphs 12-13 reproduced below:

[12] *Rule 68 is mandatory and requires that actions qualifying as expedited actions proceed under the provisions of the rule. The absence of the required endorsement is an irregularity that may be remedied by amendment. The commencement of a proceeding without the Rule 68 endorsement does not change the character of the proceeding to permit process outside the limits of the rule.*

[13] *The defendants’ motion is dismissed. The action is an expedited action and Rule 68 applies. The amendments stand. Costs of the motion will be to the plaintiff as costs in the cause.*